IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| IN RE: | § | CASE NO. 13-37200-H2-11 |
| | § | |
| GOLDKING HOLDINGS, LLC AND | § | HOUSTON, TEXAS |
| OFFICIAL COMMITTEE FOR | § | |
| UNSECURED CREDITORS, | § | MONDAY, |
| | § | JULY 7, 2014 |
| DEBTOR. | § | 2:00 P.M. TO 2:31 P.M. |

MOTION HEARING

-- -- -- -- -- AND -- -- -- -- --

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| GOLDKING ONSHORE | § | CASE NO. 14-03144-H2-ADV |
| OPERATING, LLC, ET AL | § | |
| | § | HOUSTON, TEXAS |
| VERSUS | § | MONDAY, |
| | § | JULY 7, 2014 |
| L. TALLERINE, JR., ET AL | § | 2:31 P.M. TO 2:48 P.M. |

SCHEDULING CONFERENCE

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| GOLDKING HOLDINGS, LLC | § | CASE NO. 14-03146-H2-ADV |
| | § | HOUSTON, TEXAS |
| VERSUS | § | MONDAY, |
| | § | JULY 7, 2014 |
| L. TALLERINE, JR., ET AL | § | 2:31 P.M. TO 2:48 P.M. |

SCHEDULING CONFERENCE

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR DEBTOR: SEE NEXT PAGE
COURT RECORDER/CASE MANAGER: DIYANA STAPLES

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ALSO APPEARING (TELEPHONICALLY):

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ALSO APPEARING (TELEPHONICALLY):

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(NO INFORMATION PROVIDED)

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HOUSTON, TEXAS; MONDAY, JULY 7, 2014; 2:00 P.M.

THE COURT: All right. Let me call Case Number 13-37200, Goldking Holdings, LLC.

Let's start with appearances, please.

MR. HUGHES: Good afternoon, Your Honor. Patrick Hughes, here with my partner, Don Jackson, on one of the matters that --

THE COURT: All right. Good afternoon.

MR. MUHAMMAD: And Arsalan Muhammad, as well.

THE COURT: Thank you, sir.

MR. HIGGINS: John Higgins, on behalf of Wayzata, Your Honor.

MR. CRAIG: And this is Frank Craig --

THE COURT: All right. Thank you.

MR. CRAIG: -- and Carroll Devillier in Baton Rouge, with Breazeale Sachse and Wilson, representing DPH Oil and Gas, LLC, et al.

THE COURT: All right. Mr. Craig, when I'm ready to take appearances over the telephone, I'll let you know, all right?

MR. CRAIG: Oh, I'm sorry, sir. I'm sorry.

THE COURT: All right. Any other appearances in the courtroom?

MR. REASONER: Yes, Your Honor. Barrett Reasoner, and my partner, Laura Kissel, here on behalf of Goldking

Onshore --

THE COURT: All right.

MR. REASONER: -- and Goldking Holdings.

THE COURT: Thank you, folks.

MR. MCALPINE: Kiernan McAlpine, here on behalf of Louis Belanger.

THE COURT: All right. Thank you.

MR. RIORDAN: Michael Riordan, on behalf of Goldking Energy Partners I.

THE COURT: All right. Thank you, Mr. Riordan.

All right. In addition to Mr. Craig, any other party on the telephone wish to make an appearance?

MR. VINKEY: Yes. Matt Vinkey, on behalf of Eddie Hebert.

THE COURT: All right. Thank you, Mr. Vinkey.

Anyone else?

MR. FRYAR: This is Eric Fryar and Avniel Adler, on behalf of all the Tallerine Parties.

THE COURT: Thank you, Mr. Fryar. I didn't get the second name.

MR. FRYAR: Avniel Adler.

MR. ADLER: Avniel Adler.

THE COURT: Adler. All right. Thank you, gentlemen. All right.

MR. KADDEN: Good afternoon, Your Honor. This is

Benjamin Kadden, for Leonard Tallerine, Jr. and Goldking LT Capital Corp.

THE COURT: All right. Thank you, Mr. Kadden.

All right. Anyone else?

(No verbal response.)

THE COURT: All right. Mr. Hughes, how do you want to proceed this afternoon?

MR. HUGHES: Your Honor, there's two matters that are before you. One is a contested matter on a motion to compel --

THE COURT: Right.

MR. HUGHES: -- dealing with the claim objection proceeding, as well as three related Adversary Proceedings involving turnover and claims resolution. Mr. Muhammad will handle that matter with Mr. Jackson's involvement, to the extent of particular documents that may be in controversy.

THE COURT: All right. Have we --

MR. HUGHES: And the second matter is the Rule 26 Conference, which the other Counselors are all here for and we can take that up second, if that's okay with you?

THE COURT: That makes perfect sense to me because I want to make sure -- because I have an idea and before I put an idea out there, I want to make sure I understand all the angles.

MR. HUGHES: Yes, sir.

THE COURT: All right. Mr. Muhammad?

MR. MUHAMMAD: Good afternoon, Your Honor.

THE COURT: All right. Do you want to give me an overview of where you think the dispute remains? And then I'll do the same for the Parties on -- or for Mr. Craig, right?

MR. MUHAMMAD: Perfect, Your Honor. We are here because we filed the Motion to Compel on July 2nd. On July 1st, I believe, Mr. Craig and Mr. Devillier told us that they would be amenable to producing documents. We proposed an Agreed Order. Then they informed us on July 2nd that they would not produce the audits and all the correspondence and documents related thereto. They asserted a work product privilege.

We do not believe that applies. We think there's a case by Judge Isgur from last year that's completely on point in terms of they can't assert -- you know, you can't use the Audit to base the foundation of their $5-1/2 million of claims and then to say, "No, it's work product." And that's where we have our disagreement.

THE COURT: So have we worked out the deposition issue?

MR. MUHAMMAD: Your Honor, I believe so. I believe that Mr. David Hebert is amenable to being deposed at his Counsel's office on July 31st.

THE COURT: All right. And so you think that the only remaining issue is simply the production of the Audits.

MR. MUHAMMAD: The Audit and all the correspondence and documents related thereto.

THE COURT: Do you see them as being tied together? Because it’s really hard to argue that third-party correspondence and some of the underlying documents -- and I don’t know whether we’re talking about an inch folder or a box --

MR. MUHAMMAD: Right.

THE COURT: -- full of documents, but it’s hard to argue that those documents are work product.

So do you see there being two different disputes or just one?

MR. MUHAMMAD: We believe we’re entitled to all the documents and we don’t believe they're work product. To the extent that work product applies, we think it’s waived by their assertion of the Audit repeatedly both in the Affidavit that was attached to each of the Amended Proofs of Claim that total up to $5-1/2 million or so and, also, in their -- their Initial Disclosures included a paragraph under the title “Documents,” which may be used to support the Claimant’s claims, and they included the notes and work papers of RPS, Knowledge Reservoir and all documents related to the Audit.

THE COURT: All right. And so let me -- if you don't get the Audit and the work papers, what are you going to depose Mr. Hebert about?

MR. MUHAMMAD: Your Honor, I think we are limited in what we can depose him on. I think he still filed an affidavit, but that whole Declaration -- but that Declaration explicitly states that the damages set forth herein are based on the preliminary results of the Audit.

THE COURT: All right. I think I understand.

Mr. Craig?

MR. CRAIG: (No verbal response.)

THE COURT: Mr. Craig?

MR. CRAIG: I'm sorry, I pushed the mic button.

THE COURT: No, that's all right.

MR. CRAIG: I forgot to push it back on. As you have heard numerous times and from us, the Audit was never complete because they never prepared -- produced all the documents necessary.

THE COURT: Okay.

MR. CRAIG: The Audit is -- was being conducted by people hired by me in anticipation of filing suit against Goldking in either State or Federal Court in Louisiana upon completion of the Audit because of their failure to comply with the Joint Operating Agreement that governs their operations at this particular well.

THE COURT: All right. So your --

MR. CRAIG: And our responsibilities and on which they are claiming that we owe them money.

THE COURT: All right.

MR. CRAIG: When we -- and, in fact, it's my understanding that Mr. Ersalon (phonetic has told Mr. Devillier that he is not even going to produce the documents that we've been trying -- all the documents that we've been trying to get, much -- which is the -- and so we're going to be back here with a motion to compel.

Once we get all these documents, RPS is an expert for us, but they are hired in anticipation of litigation and all those Reports are drafts. And under Rule 26(4)(b), drafts of any report or disclosures are protected and prevented -- prohibited. And similarly, they have been employed so far only for trial preparation.

And under (4)(d), they can only obtain discovery with regard to their information on a showing of exceptional circumstances under which it is impractical for the party to obtain facts or opinions on the same subject by other means.

And the -- all we have gotten from these guys is "This is the documents we have obtained and these are the ones we have not." We can't -- they haven't formed a final opinion because Goldking hasn't produced the documents that we have requested, particularly -- we don't have some correspondence. In other words, the JOA requires them to notify us in certain situations. We don't have those documents, not because we don't have them and because we lost it, but because we don't believe we ever got them. But we want to see if Goldking is even going to make a showing that they sent these documents out.

So under -- and our argument is not work product. It's trial preparation of experts under Rule 26. Those documents are simply not discoverable at this time absent a showing that it's -- exceptional circumstances or impractical for them to obtain the information otherwise. All of these are documents that are under their control and certainly they can obtain an opinion as to whether or not their documents and what they sent to us complies with the JOA.

In addition, Judge, one of the things that we have been looking for are cancelled checks. The cancelled checks are very important to show that they, in fact, paid these invoices that they are claiming are due. This case is about invoices that are -- not our case, but the entire bankruptcy and to some degree, my understanding, deals with invoices that are billed but were never paid or for excessive amounts. And that is part of our claim as to whether or not these invoices were, in fact, paid. That's why we've asked for the cancelled checks. That's why we've asked for the correspondence. So -- and that's what our RPS was trying to obtain from -- for us.

But right now, we don't have a final report, we don't have an audit. We have some preliminary notes from them, but those are protected under Rule 26.

THE COURT: What about the underlying documents?

MR. CRAIG: The documents that we got from them?

THE COURT: I don't know what it is you have.

MR. CRAIG: I'm sorry, Judge, that's the only underlying documents. It's the documents that we got from them or my correspondence to them.

THE COURT: Okay. All right.

MR. CRAIG: That's it.

THE COURT: Mr. Muhammad?

MR. MUHAMMAD: Your Honor, a couple of things.

MR. CRAIG: And, you know, it's not like there's anything -- RPS' job -- they were hired to go to Goldking and collect documents and provide us with a report on what they found, and they were never able to complete it because this bankruptcy was filed while they were in the process of trying to get some documents -- final group of documents from Goldking.

THE COURT: All right. Let me ask you this, Mr. Craig:

If -- I get the argument that you don't have a final report, shouldn't have to produce drafts, I get that. But you have, at least in my mind, affirmatively used RPS to put forth a basis for taking some action and --

MR. CRAIG: We had to. We had no other information.

THE COURT: All right. And don't you think that the basis of that opinion is discoverable having put it in an affidavit?

MR. CRAIG: It would be -- it could be, but I don't think so in this case because it is based strictly upon draft reports. We had no other option in this case than to produce those kind of affidavits to tell why we thought what the value of our claim was. But, you know -- and other than referring to the initial documentation that we got and which we're happy to give back to them, we're very happy to give back to them everything that they got from us and, you know, the -- but it is all work product how you got there.

The underlying work that gets you to that opinion, I believe, is -- remains protected even though you say, "This is how we -- this is what we based our claim on." But if you read those documents, they all say this was incomplete, we don't have any -- we didn't get it final and we -- you know, we're going to -- depending upon what we find.

It may be that if we ever get all of the documents, that what we would find is that they comply in which case our claims go away. If we don't get them, then if they don't have them, if they didn't send us the stuff necessary or if their costs are exorbitant, then our claims remain.

THE COURT: All right. Mr. Muhammad?

MR. MUHAMMAD: Your Honor, they believed in the drafts enough to file $5-1/2 million worth of claims.

And to the extent they're not complete, you know, I don't know, I haven't seen it, but we believe that's sufficient.

A couple of kind of maybe clean-up issues. One, they did request documents from us substantially on June 9th so we haven't even, you know, passed our response deadline yet. We have repeatedly, over five or six times, emailed them. Some more -- a number of times sent them voicemails. We never received a call back to kind of deal with some of this, and we never had it.

Mr. Hebert, who is the Declarant on all the claims, is also, we presume, a party -- DPH Oil and Gas, which is one of the Defendants -- its representative, so we -- and he signed the Proof of Claim itself for, you know, several tens of thousands -- hundreds of thousands of dollars. So we don't think it's as simple as saying, you know, he had no other option.

We believe we are entitled to each of the Claimant's documents that lay the foundation for their claims that total up to $5-1/2 million. We don't think it's sufficient to just turn back whatever the Auditor copied from our office.

THE COURT: Well, I presume that you don't want documents that you already have.

MR. MUHAMMAD: We don't know what documents they have because an auditor came in and copied them, but that's not the main object of our, you know, document request.

THE COURT: Okay. But I want to go back to that statement for a second. You actually do know what they have because you gave it to them, right?

MR. MUHAMMAD: There's -- I think what Mr. Craig is referring to -- so they came into the Debtors' offices prior to filing bankruptcy --

THE COURT: Okay.

MR. MUHAMMAD: -- and copied a bunch -- they're, I'm assuming, RPS copied a bunch of documents from our offices and did some preliminary audit, and that's the subject of the dispute.

In early June, as part of our initial disclosures, we voluntarily produced 8500 pages of documents that substantially form the backup to all the JIBs and all the invoices that we believe -- that they owe us some $200,000 based on. So I don't know -- you know, there's two sets of documents basically. Obviously, we don't want the 8500 pages that we just produced to them a month ago.

THE COURT: So --

MR. CRAIG: Your Honor, may I say something again?

THE COURT: Not quite yet.

So what you're telling me is you don't want the 8500 pages back.

MR. MUHAMMAD: Of course.

THE COURT: What you want to know is what else they copied?

MR. MUHAMMAD: Yes.

THE COURT: But shouldn't you have -- if they copied something that was in the Debtors' offices, I'm assuming that you made available everything that you had.

MR. MUHAMMAD: Yes.

THE COURT: So you already have everything that they've looked at, right?

MR. MUHAMMAD: We -- those documents, yes, but we don't know if that's the only things they've looked at.

THE COURT: Well, my question was you don't want anything back that you produced.

MR. MUHAMMAD: Yes.

THE COURT: Okay. What you want to know is if there are documents outside of those that you produced that have been relied upon by Mr. Hebert; is that correct?

MR. MUHAMMAD: Yes.

THE COURT: All right. Mr. Craig, is there any objection to producing any documents reviewed by Mr. Hebert that were not produced by the Debtors in either the 8500 document production or whatever it was you went into the offices and copied documents?

MR. CRAIG: Except to the extent that it will require us to produce preliminary reports by the experts or communications to and from the experts with respect to -- from us or from the client in anticipation of litigation that was -- we were planning on filing.

THE COURT: So has Mr. Hebert been declared a testifying expert at this point?

MR. CRAIG: No, sir, he's just a -- David Hebert is a -- he's an engineer and he invests in oil and gas properties and that's simply an oil and gas investment. Mr. Hebert has not been declared an expert nor have the gentleman from RPS been declared an expert because he's -- we have not decided whether or not -- who's going to be a testifying expert until we have gotten everything and had RPS look at it. They may end up being a testifying expert, they may not. We just don't know yet because their work isn't completed. We haven't seen what the results will be.

And it's unfair to make us to produce preliminary stuff and then a final report when --

THE COURT: Well --

MR. CRAIG: -- whoever that may be -- that may be bought. We may very well hire a completely different expert to testify not only on the documents found by RPS but also on the processes and procedures utilized by Goldking in drilling this well and the reasonableness of the costs incurred.

THE COURT: All right. So how is it that -- if Mr. Hebert is the one who signed the Proof of Claim and --

MR. CRAIG: Yes, sir.

THE COURT: -- with the representation that is made on the Proof of Claim Form, is Mr. Hebert going to be able to testify without making any reference to any opinion that he has given?

MR. CRAIG: Your Honor, the Proof of Claim Form I don't think requires an expert.

THE COURT: I agree --

MR. CRAIG: But the --

THE COURT: -- but he signed it.

MR. CRAIG: And during the course of this proceeding because of rulings -- the pleadings that were going on and disputes with Goldking, you know, in order to step over some of their objections to our right to even bring these claims, you asked us to provide with affidavits or proof some method, some layout of how we arrived at the amounts.

If it’s not -- Mr. Hebert is certainly not an expert, but he is -- you know, but he is -- if they’re going to -- if they want to know how he arrived at his opinions for purposes of this -- not for testimony purposes, not -- you know, he’s not going to be the one that testifies that this is the damages. He’s going to -- you know, he’s just a fact guy.

But if they -- they are certainly able to cross-examine him at his Deposition on how he arrived at his -- what he set forth in the Statement and, you know, but in terms of hanging the underlying draft work product -- we’ll give them everything RPS got, but we won’t -- we don’t believe that the -- we believe that Rule 26 protects the communications back and forth with RPS and RPS’ -- well, they’re -- basically they say, “Well, we found these documents but we need more before we can come up with a conclusion.”

THE COURT: All right. Mr. Muhammad, let me ask you.

What you’re proposing to do is you’re proposing to take the Deposition of David Hebert, correct?

MR. MUHAMMAD: Right.

THE COURT: In what capacity, as the person who signed the Proof of Claim, as the representative of some party and, if so, who?

MR. MUHAMMAD: As the person who signed the Proof of Claim for DPH. But his Declaration is also attached to each of the claims.

THE COURT: Right.

MR. MUHAMMAD: And we think that, in that capacity, we can also ask him questions that apply to each of the Claimants.

THE COURT: I agree. Here's --

MR. CRAIG: And there's no problem because the -- with all these Claimants, they all got the same amount of information --

THE COURT: Here's --

MR. CRAIG: -- or lack of information.

THE COURT: Here's what I'm going to do: I want you to start the Deposition of David Hebert.

And, Mr. Craig, listen loud and clear.

MR. CRAIG: Yes, sir.

THE COURT: If David Hebert makes any reference in his answers to any report or opinion that he's prepared or provided to you or whoever else, if he gives any answer in my testimony that that formed the basis of his meeting his responsibilities under the Code to sign the Proof of Claim, then whatever it is, whether it's a letter, or a report, a draft opinion or an email, that gets produced.

If he can testify as to how he did what he did with respect to the Proof of Claim without referencing any draft report, then I agree with you, it won't be produced at this point.

MR. MUHAMMAD: Your Honor, can I say one thing?

THE COURT: Sure.

MR. MUHAMMAD: In the Affidavit that's -- or the Declaration that's attached to the claims, he explicitly says that the damages set forth herein are based on the preliminary results of the Audit conducted.

THE COURT: I got it.

MR. MUHAMMAD: Okay.

THE COURT: And that may make the questioning go very difficult for Mr. Hebert. And if you need to stop and seek some emergency relief because there's a dispute, I understand it. But I think the right thing to do at this point is: you put Mr. Hebert under oath, you start your examination of how he got there. And if he can walk you through the calculation without reference to his Report, then I think that he can do that, then you've got your Record.

If he tries to make reference to the Report or says, "Well, I don't remember how I do it. It's set forth in the Report," then the Report gets produced because, at that point, it's -- I'm not going to allow him to use it both as a sword and a shield. It's -- he's going to have to pick. He's either going to have to go through, under oath, his basis for making the representations and signing the Proof of Claim Form or, if he's going to reference a document, you're going to get the document, okay? Now --

MR. CRAIG: No problem, Your Honor. And, in fact, you understand, Your Honor, if they produce all this information, all of this may go away because -- this hoorah over a report that was never complete because if we get everything, we may very well have an expert and tell them we've hired -- that this is going to be our trial expert and you'll get their Report the next day.

THE COURT: Well, if Mr. Hebert signed the Proof of Claim and Mr. Hebert's going to be designated as an expert, that may create a whole different set of issues, but that's not before me today.

MR. CRAIG: Mr. Hebert will not be designated as an expert.

THE COURT: Let me go back to -- because I want to make sure I understood it. So that's the issue with respect to the Reports.

With the underlying documentation, is there an easy way to figure out what wasn't produced in the

8500 pages that you could go and look at or is that just a "You're going to have to go look at everything. Here are 12 boxes. This is everything we got"?

MR. MUHAMMAD: Your Honor, I think we would like to see everything because, to an extent we don't know --

THE COURT: Fair enough.

MR. MUHAMMAD: -- if the Debtors' documents are full and complete so --

THE COURT: Mr. Craig, is that a production that's fairly easy to accomplish?

MR. CRAIG: I'll ask Mr. Hebert. I'll have to go back and look at my files, too, Your Honor, because they came to me.

THE COURT: All right.

MR. CRAIG: And I'm just not sure -- I just don't -- understand that this was last year.

THE COURT: Understood.

MR. CRAIG: A year ago.

THE COURT: But to the --

MR. CRAIG: And I don't recall the format that the documents -- the underlying documents were -- if they were even sent to us or if they remain with RPS.

THE COURT: All right.

MR. MUHAMMAD: Your Honor, obviously, we would like to see the documents sometime before the Deposition on the 31st.

MR. CRAIG: Oh, certainly.

THE COURT: All right. So I'm going to leave that issue for you all to work out. If it turns out that that's going to be an issue, then don't start the Depo and come back and maybe we'll do the production and the Depo here in the courthouse. I don't know how else to do it.

But I'm going to let you all see if you can't work through that because, to me, Mr. Hebert's got to know what he looked at and I find it hard to believe that he doesn't have his own set of everything that he thinks is important sitting somewhere in his file. So I'm going to --

MR. CRAIG: And, Your Honor, everything in Mr. Hebert's files except for the communications from RPS are going to be produced that are relevant and -- oh, and communications with me, of course. We're in the process of collecting and going through that right now. He -- Mr. Hebert, like I said, is an individual.

THE COURT: All right.

MR. CRAIG: He has --

THE COURT: I'm going to leave that issue to you all to work through. If there's a problem, file something on an emergency basis. I'll take it up. But get this issue straight before you start the examination. I don't want you to get four hours into it and then -- because you think that you're going to get something. Get it all together and either come back and complain or say, "Okay. We've got everything. We're going to go forward with the examination at this point."

MR. MUHAMMAD: Yes, Your Honor.

THE COURT: Can you craft an order that reflects that, pass it by Mr. Craig so I can get -- to me, I want something written on this so it's very clear what I've decided and what the Parties are instructed to do because it's my guess I probably haven't heard the last of this.

MR. MUHAMMAD: Yes, Your Honor. Thank you.

THE COURT: All right.

MR. CRAIG: Yes, sir.

THE COURT: If you'd pass it by Mr. Craig to approve as to form only, all right?

MR. MUHAMMAD: Of course.

THE COURT: All right. Mr. Hughes, did you have something you wanted to add or you were just anticipating getting up?

MR. HUGHES: Oh, I was channeling Mickey Scheinfeld (phonetic), I guess, at times and so I'm trying to restrain myself.

I just want to make sure that we're able to get their documents that relate to items they receive from us because part of their defense in this case is premised upon an alleged failure of us --

THE COURT: To get documents.

MR. HUGHES: -- to provide them with information.

THE COURT: Got it.

MR. HUGHES: And it's telling that we would not be able to get documents from them from their files as received by us or independently.

THE COURT: I get it. And I'm going to let you -- and I want to make sure I was clear. I'm going to let you all work through that issue and better refine it to the extent that a dispute still exists because I'm not sure what to do with what I've got right now.

MR. HUGHES: Okay.

THE COURT: If you aren't satisfied that you've gotten whatever it is you want that was -- don't start the examination. Come back and let's get this resolved so that Mr. Hebert only has to sit through one examination, the lawyers only have to prepare once and we don't duplicate any time and effort. Then I'll deal with -- if I think that either side is being inappropriate, then I'll deal with it in the context of an emergency motion from either side.

MR. HUGHES: We'll plan on a call with opposing Counsel tomorrow if their schedules permit --

THE COURT: All right.

MR. HUGHES: -- and we can try to flesh through whatever the wording is of an order or if there's a remaining dispute.

THE COURT: All right. Terrific. All right.

MR. CRAIG: Thank you, Your Honor.

THE COURT: Yes, sir. All right.

Do you want to take the two Adversaries together, Mr. Hughes?

MR. HUGHES: Yes, sir, that does make sense. And I think Mr. Reasoner is lead trial Counsel in the removed case. I'm lead Counsel, I suppose, in the objection to claim case. I don't want to dominate the discussion.

THE COURT: No, let me just -- let me start this. I read the Motion and it seems like that everybody agrees that this ought to be reshuffled although I'm not sure everyone agrees to what degree. In looking through everything, it seems to me that we have two Adversaries.

Why, through an appropriate order, could we not simply transfer claims back and forth so that we end up with one of the pending Adversaries -- and I'm not sure I care which one it is -- we end up with -- is it Belanger or Belanger?

MR. HUGHES: Belanger.

THE COURT: Belanger, excuse me. That we end up with the Belanger claims in one Adversary and then everything else over in the other Adversary.

MR. HUGHES: That makes sense. Perhaps we can just keep the Belanger claims in the 46 Adversary -- the claim objection proceeding and then move everything else into the 44, which is the removed action whereby --

THE COURT: Fine by me.

Does anybody have an objection to that approach? Obviously, you can't comment on an order because we don't have one, but does anyone have an objection to proceeding in that manner?

MR. MCALPINE: No, Your Honor. In principle, that makes sense to me.

THE COURT: All right. Let me -- so can we -- think we can get an order on that? This is going to require a number of eyes.

Do you think we can get that done this week?

MR. HUGHES: Yes, sir.

THE COURT: Okay.

MR. HUGHES: I think everybody's attention is on it.

THE COURT: All right. So let's circulate an order. And let me ask you:

Once we reshuffle all of those claims, are we going to need pleading amendments that need to be made?

MR. HUGHES: I believe so, particularly as to the Belanger Parties, and I've spoken to Counsel about that.

And then because we're combining an Amended Complaint filed by the "Tallerine Parties," for shorthand, with, you know, the objection to counterclaim, it probably makes sense to try to fold all of our claims against them and their claims against us into one pleading that encapsulates all causes of action.

THE COURT: I would really like to do that because whether it stays in front of me or whether it goes upstairs or back to State Court, whoever -- if I keep it, I'd like to be able to sort it out fairly quickly. And if I send it to another Judge, I'd like for that Judge, whoever he or she might be, to be able to say, "Okay. Here's what I've got before me," as opposed to trying to go back and look at what I did and maybe not having the access to a transcript or something like that and trying to sort it out listening to a bunch of different lawyers six months from now.

If everybody's agreeable to doing that, what do we think our timetable is? What I'd like to be able to do is I'd like to get whatever affirmative pleading we're going to proceed on, whatever defensive pleading, the counterclaims we're going to have, get those on file, have a Rule 26 conference.

If there's still Rule 12 motions that need to be heard, if you all want a hearing, I want to set those for hearing. That is, I want to get this moving forward if we can and it just seems to me that if we can get good pleadings that set forth all the claims and the defensive pleadings set forth all the counterclaims and affirmative defenses and whatever else is going to be filed, at that point, I then have something that we can actually move forward on.

MR. HUGHES: We agree, Your Honor. I think talking somewhat out loud, I think on the Debtors' side, all of the affirmative claims that are not already encapsulated in the Amended Complaint filed by Gibbs and Bruns with us --

THE COURT: Right.

MR. HUGHES: -- as of Counsel, essentially means moving over the counterclaim causes of action into that. So I don't think that's a very complicated fix and we could probably do that within a week.

MS. KISSEL: Yeah.

THE COURT: Do you want to check? Mr. Reasoner's frowning so I want to make sure --

(Laughter.)

MR. REASONER: It's always funny but nodding either, Your Honor. A week would be fine.

THE COURT: Okay. All right.

MR. HUGHES: Ms. Kissel actually was saying, "Yes," so I figured we were probably safe for that.

THE COURT: All right.

MR. HUGHES: And then for Mr. Belanger, I'll need to kind of -- Mr. McAlpine on how much time he needs.

MR. MCALPINE: Generally, a lot of this has already done so as far as whether or not we would be --

THE COURT: Mr. McAlpine, you need to stand when you talk to me.

MR. MCALPINE: Oh, excuse me.

THE COURT: That's okay. So I know you don't know exactly what you're going to get, but let me -- if I gave you -- if I gave -- without trying to figure out whose way -- or if I gave the Plaintiffs two weeks to file an amended pleading and then I give you two weeks or I give the Defendants two weeks to file an amended pleading, do you think that's sufficient? Again, you haven't seen what's coming although you probably have a good idea.

MR. MCALPINE: I suspect that two weeks is ample time for us so, yes.

THE COURT: All right. So we could probably come back and have a meaningful scheduling conference sometime the first week or so of August; would that make sense?

MR. MCALPINE: That makes sense.

THE COURT: All right. And does it make sense to wait and see what actually gets filed before we decide whether or not we want to proceed forward on the Rule 12 that you currently have on file or an amended Rule 12 once you see what's actually filed?

MR. MCALPINE: I actually do think that that makes sense.

THE COURT: Okay.

MR. MCALPINE: I suspect that there may be some changes so.

THE COURT: Yeah, just my guess is probably so because just -- it will evolve is my guess.

MR. MCALPINE: Uh-huh.

THE COURT: All right. Are there any other -- anyone on the telephone have any comments they want to make?

MR. FRYAR: This is Eric Fryar. I just to say that for us to respond two weeks after we get the new pleadings against our clients I think is more than fair.

THE COURT: All right. Terrific. Thank you.

All right. So, Mr. Hughes, today's the 7th, so the 21st?

MR. HUGHES: The 21st is fine for us to file amended pleadings setting forth our claims broken down as to Mr. Belanger and 46 and against the other Parties in 44.

THE COURT: All right. And so that would then -- responsive pleadings, whatever they might be, would be August the 4th?

MR. HUGHES: Yes, sir.

THE COURT: Then you want to have a Scheduling

Conference on the 18th; is that too quick or does that work for everybody?

MR. HUGHES: That is the date of our Confirmation Hearing. I don't know -- right now, we're looking at less than --

THE COURT: Well, that's a good point.

MR. HUGHES: -- a consensual process so that might be a crowded day.

THE COURT: No, that makes perfect sense.

Do you want to do on the 25th?

MR. HUGHES: That'd be fine for us.

THE COURT: Is that okay with everybody?

MR. MCALPINE: Yes, Your Honor.

MR. REASONER: Yes, Your Honor.

MR. HIGGINS: Yes, Your Honor.

THE COURT: All right.

MR. FRYAR: This is Eric Fryar. I've got a trial that's starting on the 25th and I think I probably ought to be there.

THE COURT: Okay. Mr. Fryar, do you think that will take all week?

MR. FRYAR: Yes, I think it will take all of that week. I think we'll be done in a week.

THE COURT: Any reason -- and I know this wouldn't be on your normal hearing day. Any reason we couldn't do it say 11:30 on the 21st?

MR. FRYAR: One moment, Your Honor. That'd be perfect.

THE COURT: All right. Anybody else? Anybody got a scheduling problem with the 21st, at 11:30?

(No verbal response.)

THE COURT: All right. Now, let me make this suggestion, too. When we get amended pleadings, I don't need you all to spend a lot of time putting together a Rule 26 report. I would rather for you all to spend the time and actually sort of identify the issues. I mean, obviously, you want to talk about how long you need for discovery and you can talk about some deadlines.

If there's going to be a round of Rule 12 motions, be candid with one another and let's -- if there's going to be limited discovery or briefing issues, have that discussion so when we reconvene, we can actually have a meaningful calendaring discussion so we can get some dates down and we can start the process.

Does that work for everybody?

MR. MCALPINE: Yes.

MR. HUGHES: Yes, Your Honor.

THE COURT: All right. Mr. Reasoner?

MR. REASONER: Yes, Your Honor. I didn't mean to interrupt the Court.

THE COURT: No, it's okay.

MR. REASONER: Just to make sure that -- and maybe this is apparent to others, but to make sure that we deliver the pleading that you are looking for, from the standpoint of the Adversary Proceeding, you know, we've recently amended so those claims are -- I'm not sure we'll look at them again, but they're current.

In the other Adversary, the objection, we are arguably defendants there and that we are objecting to Mr. Tallerine and others' claims.

THE COURT: Right.

MR. REASONER: So I'm wondering if you want those -- you know, if the bases for those objections are, in part, the same as our affirmative claims.

THE COURT: Sure. What --

MR. REASONER: But we wouldn't -- I'm just trying to figure out what should go in our initial pleading and what should be in the responsive category.

THE COURT: Sure. Let me tell you what I had inside my head when I said that because I don't know what strategy you're trying implement or I haven't sat down and tried to figure it out and maybe I couldn't even if I tried. The point was is that to the extent that the Debtor is the Plaintiff, then whatever it is you're going to live with -- it may be you make no changes.

It may very well be you send an email to Counsel and say, "We're going to live with this Amended Complaint and that's all we intend to assert." Now, my guess is that probably isn't true just based on the shifting that I think is going to occur. But whatever it is -- and with respect to the objection is -- seems to me -- I mean, I get what you're saying, but having filed the objection, essentially you're still the Plaintiff in my mind.

So whatever pleading it is that you're going to proceed on -- and you can -- I know you probably know as well, but you get with Mr. Hughes and you can figure out do I need an Adversary complaint because I'm going to seek this type of refer which is beyond the scope of a contest matter, that sort of thing. Whatever it is that you're going to do, is -- that's the pleading I want to see.

And so, I mean, I wouldn't expect you to assert affirmative defenses until you see what the responsive pleading is. But all I'm trying to do is: by rearranging all this, essentially I'm trying to start over and get everybody into place where we have an easier read, affirmative pleading requesting for relief setting forth these claims and these causes of action. I get a responsive pleading that answers and asserts counterclaims. I'm just trying to actually get this back to the point where it looks like a lawsuit is what I'm really trying to do, if that makes sense.

MR. REASONER: That clarifies it. Thank you, Your Honor.

THE COURT: All right. Sure. Yes, sir?

MR. MCALPINE: I'd like to ask, Your Honor. We haven't filed an Amended Complaint in this Adversary Proceeding yet on the basis that we're seeking remand pursuant to 1452. We had filed that earlier in June and I was just wondering what sort of guidance you might have as far as how to approach the next sort of upcoming deadline as far as do we file an Amended Complaint subject to our request for remand --

THE COURT: Fair enough. Let me --

MR. MCALPINE: -- something like that?

THE COURT: I'm not going to try to limit you at all because I don't want to inadvertently deprive you of any right that you might have.

What I would ask you to do is: once you see the amended pleading, if you still think there's a basis for it to be remanded, it seems to me you can do two things: you can -- if nothing's new, then you can file something that says that you want to be heard on your remand before you file an affirmative pleading, and I'll take that as your affirmative pleading in compliance with my Order.

If what you want to do because it may help you is you want to file a responsive pleading subject to your Motion to Remand, you're not going to waive anything. I want to get this so that I fully understand the issues and I've got a self-encapsulated lawsuit, if you will, that I can do something with.

Right now, if I were to try to do something with these, I quite honestly don't know how I would parse it up. If I decided that something ought to be remanded, there's something that ought to be upstairs, I don't know what I would do, and so I'm trying to figure that out.

So I'm really -- I'm asking you to help me get this in a position where I can deal with it as a real lawsuit. Then I can rule on motions to remand, I can rule on Rule 12 motions, I can -- if there's a motion to withdraw the reference, I can deal with that. Just get me to the point where I have something that I can actually bring some finality to, whatever it is. That's what I'm after.

MR. HUGHES: May I try to help on that point --

THE COURT: Sure.

MR. HUGHES: -- too, Your Honor?

THE COURT: Sure.

MR. HUGHES: I know that we've had a number of discussions so I don't want to touch on matters that might be covered by 408, but in a nutshell, I'll stipulate on behalf of the Debtors that their filing of an Amended

Complaint will not impair any pending motion for remand arguments they have in terms of any objections they have to jurisdiction or otherwise. But we think it's important to see in black and white in a complaint what all of their claims are and would like to see that before we argue the remand, and I think that'd be appropriate.

THE COURT: Well, because what you're going to get -- the reason I'm trying to do this -- and this is not a big secret -- yeah, I know how he thinks. I've dealt with him for way too long. If you go "I want a hearing on my Motion to Remand," and you don't put out your claims, then we're going to go through a round of discovery about what your claims are.

And I was really trying to cut that off by -- if -- you've got that stipulation and you've got me telling you that you're not going to hurt your Motion to Remand or you're not going to waive anything, then if you go ahead and put it out there, you're going to avoid subjecting your clients to a round of free-look discovery, if you will. And maybe I'm -- maybe he was trying to bait you into that, I don't know. But if you get on the table, then we've got something that we can argue about and it's going to minimize the exposure that at least your clients have initially to discovery.

Does that makes sense?

MR. MCALPINE: Yes, Your Honor. Thank you.

THE COURT: Sure. All right.

Mr. Hughes, anything else?

MR. HUGHES: No, sir, I think that's it.

THE COURT: All right. So we think that we can craft two orders and we can get one of them done pretty quick, and the other one by the end of the week?

MR. HUGHES: Yes, on Mr. Belanger's, I think we can do that pretty quick.

THE COURT: Okay.

MR. HUGHES: And then on all the other Parties that need to look at the other form of order by the end of the week.

THE COURT: Okay.

MR. HUGHES: Assuming all Parties, including those on the phone, are -- don't have a scheduling problem seeing a form of order tomorrow or the next day.

THE COURT: Yeah, everybody's back from the 4th and ready to work.

MR. HUGHES: Okay.

THE COURT: All right.

MR. HUGHES: Great.

THE COURT: Anything else we need to talk about today?

(No verbal response.)

THE COURT: Anybody on the telephone got any comments or arguments that they want to make?

(No verbal response.)

THE COURT: All right. Thank you, folks. You're all excused.

(The Parties thank the Court.)

(Proceedings adjourned at 12:47 p.m.)

* * * * *

*I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.*

*/S/ MARY D. HENRY*

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